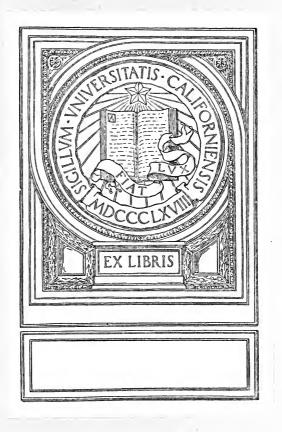
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THOUGHTS

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LETTER of EDMUND BURKE, Efq;

TO THE

SHERIFFS of BRISTOL,

ON THE

AFFAIRS of AMERICA.

BY THE EARL OF ABINGDON.

OXFORD,

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THOUGHTS

ON THE

LETTER OF EDMUND BURKE, Esq.

TAVING feen Mr. Burke's late Publication I on the affairs of America, I was led to read it with all that attention which every performance of his must necessarily deserve. fympathise most cordially with him in those feelings of humanity, which mark, in language fo expressive, the abhorrence of his nature to the effusion of Human Blood. I agree with him in idea, that the War with America is " fruitless, hopeless, and unnatural"; and I will add, on the part of Great-Britain, cruel and unjust. I join hand in hand with him in all his propositions for Peace; and I look with longing eyes for the event. I participate with him in the happiness of those friendships and connexions, which are the subjects, so deserved-A 2 ly,

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ham is a facred deposit in my bosom. I have found him disinterested, I know him to be honest. Before I quit him therefore, I will first abandon human nature.

So far then are Mr. Burke and I agreed. I am forry that we should disagree in any thing. But finding that we have differed, on a late occasion, in our parliamentary conduct; and that I cannot concur with him in opinion on a matter, as I think, of very great national importance: it is therefore not in the zeal of party, but in the spirit of patriotism, not to consute, but to be convinced, not to point out error, but to arrive at truth, that I now venture to submit my thoughts to the Public. I feel the weight of the undertaking, and I wish it in abler hands. I am not infenfible to my own incapacity, and I know how much I stand in need of excuse: but as public good is my object, public candour, I trust, will be my best apologist.

Mr. Burke commences his Letter with the mention of "the two last Acts which have "been passed with regard to the Troubles in "America." The first is, "for the Letter of "Marque," the second, "for a partial suspension of the Habeas Corpus." Of the former,

he fays little, as not worthy of much notice. Of the latter, his distinctions are nice, his strictures many, his objections unanswerable; and yet, although so well apprised of the dangers and mischiefs of this Act, he says, " I have not " debated against this Bill in its progress through "the House, because it would have been vain " to oppose, and impossible to correct it." But this is matter of inquiry. As I thought differently, I acted differently. Being in the country, this Bill was in its way through the House of Lords before I knew any thing of it. Upon my coming accidentally to town, and hearing of its malignity, I went down to the House, I opposed it, and entered my solemn Protest on the Journals against it. It is true, I stood single and alone in this business; but I do not therefore take shame to myself. Rectitude of intention will even fanctify error. But Mr. Burke fays, "During its progress through the House " of Commons, it has been amended, so as to " express more distinctly than at first it did, the " avowed fentiments of those who framed it." Now if the Bill was amended in its progress through the House of Commons, Mr. Burke's reason " for not debating against the Bill" cannot be well founded; for his reason is, "that " it would have been vain to oppose, and im-" possible to correct it:" but to amend a thing is to correct it; and therefore if the Bill was amended, it was not impossible to correct it.

The case was this. This Bill was brought into the House of Commons under the black coverture of defigning malice. Some of the honourable Members of that House, seeing it in this dark disguise, endeavoured to unrobe it of its darkness. Their endeavours succeeded, and "it was amended, fo as to express more dif-"tinctly than it at first did, the avowed senti-"ments of those who framed it." shape it came to the House of Lords: bad enough in all conscience: but I use Mr. Burke's own words when I fay, "there is a difference " between bad and the worst of all." I thought it bad, and therefore I put my negative upon it: had it been worse, a fortiori, I should have done the same. But here it would seem as if Mr. Burke and I were not agreed in our notions of bad and worse: for what he holds bad, I esteem worse, and what he calls worse, I think bad. To explain myself. He considers a partial Suspension of the Habeas Corpus a greater evil than an univerfal suspension of it. I conceive the contrary: though if Mr. Burke's premises were right, I should approve his reasoning, and admit his confequences. He fays, "whenever " an Act is made for a ceffation of law and es justice,

"' justice, the whole people should be universally "fubjected to the same suspension of their " franchises." Be it so: but then the whole people should fall under the reason and occafion of the Act. If England was under the same predicament with America, that is to say, if Englishmen were looked upon to be Rebels, as the Americans are, in such a case, a partial fuspension of the Habeas Corpus would be invidious, and confequently more unjust than a general suspension of it; for why should one Rebel be distinguished from another? but Englishmen are not accounted Rebels, and the Americans are; and therefore in the same degree that a partial suspension, on the one hand, might be just, an universal suspension, on the other, would be unjust. Where the offence is local, the punishment too must be local. It would have been unjust if the lands in America had been forfeited to the Crown in the year 1745, because Scotland was then in rebellion. I do not use these arguments in favour of the Bill. The principle was bad with respect to America: it was worse with regard to this country. And herein confifted the very malignity of the Bill: for whilst the Habeas Corpus was taken away from the imputed guilty Americans, the innocent English were at the same time deprived of its benefit; suspicion, without oath, being A 4 made

made the two-edged fword that was to cutboth ways.

But, fays Mr. Burke, "The alarm of such a "proceeding," (that is of an universal suspension of the people's franchises) "would then be "universal. It would operate as a fort of call "of the nation." As to my part I have heard so many calls of the nation of late, without any answer being made to them; that I fear the nation has either lost its hearing or its voice: but supposing otherwise, of what avail can a call of the nation be against the supremacy of an act of parliament? And who shall dare to resist the authority of a statute that can alter the established religion of the land, nay even bind in all cases what soever? But more of this by and by.

Mr. Burke goes on to fay, "As things now fland, every man in the West-Indies, every one inhabitant of three unossending Provinces on the Continent, every person coming from the East-Indies, every gentleman who has travelled for his health or education, every mariner who has navigated the seas, is, for no other offence, under a temporary proscription." But how did things stand before the amendment of the bill? Not only every man as described above, but

every individual in this kingdom was under the fame temporary proscription. The writing of a letter to, or receiving a letter from, America, in this country, though the contents were ever so harmless, was ground of suspicion sufficient to immure a man in the castle of Dumfries, or Pendennis, or wheresoever else persecution should think sit to send him *. We have been saved from this hell-governed proscription. Opposition removed it from us. It had been well to have done so from every subject of the realm: but it did what it could, and the liberty of many unoffending persons has been preserved thereby.

This being the state of the bill, amended, as Mr. Burke himself confesses, one might have thought that, though bad, it was better than it had been; but the very reverse of this is the opinion of Mr. Burke: for in one place, he says,

^{*} It is faid that the number of persons who died in disserent prisons during the despotic government of the Marquis de Pombal, late minister of Portugal, without having been convicted of any crime, is computed at 3970 persons; and those who were languishing in irons at the time of his disgrace amounted to 800. If this act had passed, as it was first framed, and if we may measure our punishments by those meted out to our brethren in America; what reason is there to suppose that our situation had not been the very counterpart of this?

the limiting qualification, instead of taking "out the sting, does, in my humble opinion " sharpen and envenom it to a greater degree." And, in another, he adds, "that far from fof-" tening the features of fuch a principle, and "thereby removing any part of the popular " odium or natural terrors attending it, I should " be forry, that any thing framed in contradiction " to the spirit of our constitution did not instantly " produce in fact, the groffest of the evils, with " which it was pregnant in its nature." So that amendment, by foftening the features, and removing the popular edium, without producing the groffest of evils with which it was pregnant in its nature, has, if I may use such terms of contrariety, made the bill worse. Such is the doctrine of Mr. Burke, and just it may be: but if it be, I can only fay that he and I fee objects through different mediums; and that if he thinks it right to do evil that good may come of it, I wish to do good, by averting the evil. The physician that stops the progress of a disease, may, at one time or another, hope for its cure; but he that leaves the disease to the efforts of nature alone, trusts to a cause that is yery unsure in the effect. Mr. Burke, however, in aid of his opinion fays, that, " On the next " unconstitutional act, all the fashionable world " will be ready to fay-Your prophecies are ri-" diculous,

" diculous, your fears are vain, you see how little " of the mischiess which you formerly foreboded " are come to pass. Thus by degrees that artful " foftening of all arbitrary power, the alledged " infrequency or narrow extent of its operation, " will be received as a fort of aphorism: and Mr. " Hume will not be fingular in telling us, that " the felicity of mankind is no more diffurbed " by it, than by earthquakes, or thunder, or the " other more unufual accidents of nature." Now as to the fashionable world, living as they do under the tyranny of that greatest of all tyrants, fashion, upon such an occasion, I should hardly look up to them as a fit court of appeal. And as to Mr. Hume, let those remember who adopt his aphorisms—that that great philanthropist and friend of liberty, Doctor Franklin, has not, in the depths of his wisdom thought, " alledged infrequency or narrow extent of ope-"ration," any argument to prevent the protec-tion of mankind even "against the more un-"usual accidents of nature;" and let them in the remembring of this, regret, that his politics, like his philosophy, have not been the subjects of our experiment. Happy, thrice happy, had it been for this country, if, instead of besetting this able man with foulmouthed language, and indecent mockery, (indecent doubly

doubly so, because of the venerable council before whom he stood) his advice, like his conductors, had been made use of to draw the forked lightning from that portentous cloud, which, with overspreading ruin, has now burst upon our heads.

Another argument made use of by Mr. Burke for not debating against the Bill, is this. "It is," fays he, "fome time fince I have been clearly convinced, that in the present " state of things, all opposition to any measures of proposed by ministers, where the name of "America appears, is vain and frivolous." I think so too: but then, it does not therefore follow that opposition is to be laid aside. The question, how far a member of either house can give over his attendance in parliament, because he is out-voted, is a nice question; and worthy the examination of those who have leifure and abilities for the purpose. My own private opinion is, that no member, individually, can do this, confiftently with his duty. Collectively he may: as the precedent of feceffion, during the administration of Sir Robert Walpole, shews; and as reason proves; for it is not to be prefumed that a combination to this end can be obtained, without a sufficient foundation.

foundation for it; and therefore when it does take place, it is intended, as Mr. Burke elsewhere favs, " as a fort of call of the nation." But even here, I must not think it justifiable, unless supported on the following grounds. In the first place, the secession must be general, that is to fay, it must not consist of this or that party only in opposition, but must include the whole minority against the measures that have provoked fecession. In the next place, it must be a fecession not sub silentio, but proclaimed either by Remonstrance on the Journals, or public Address to the People; and when both these circumstances attend the act, then secesfion is not only justifiable, but is the most faithful pledge of duty that can be given. I have therefore exceedingly to lament that a feceffion, fuch as this is, has not been carried into execution; and not only on account of the proof that would have been given thereby to the nation of the fincerity of opposition, but because I do verily believe from my soul, that if it had, daring as ministers are and have been, they would not have prefumed to have gone the lengths they have done in the open violation of the Constitution; though upheld, as they fay they are, by parliament, by the countrygentlemen, and by their long tribe of obsequious addressers.

But to return more directly, to the argument of Mr. Burke, and admitting that "all " opposition, where the name of America ap-" pears, is vain and frivolous," and therefore that Mr. Burke was right in not debating against the Bill, the same reason must hold good in every case of opposition where the same circumstances exist: for not to debate in this instance, and to debate in another, "where st the name of America appears," must be wrong. Both cannot be right. And therefore Mr. Burke's repeated propositions so ably made, and so well supported, for peace, might have been dispensed with. Objections to taxes, in aid of this destructive war, were unnecessary. In short all debate was

" Time mispent, and language misapplied:"

for "all opposition is vain and frivolous, where "the name of America appears."

Having thus stated the reasons, and examined the motives that occasioned a difference in conduct between Mr. Burke and me; I shall now, turning over those many leaves of his letter, of which, were I to take any notice, it must be in admiration and in praise, proceed to that part of it wherein our difference in opinion prevails. And here, in page 46, Mr. Burke says, "But I "do

do affure you, (and they who know me pub-" lickly and privately will bear witness to me) "that if ever one man lived, more zealous " than another, for the supremacy of Parlia-" ment, and the rights of this imperial Crown, " it was myself." Now if I cannot join with Mr. Burke in this folemn declaration of his, I trust, it will not be therefore imputed to me, that I am less zealous than he is for the rights of the British Legislature; nor if I object to the terms of his proposition shall I be condemned as captious: for to cavil does not belong to me, and more especially about words. But when I fee, and know, and am perfuaded, that thefe very modes of speech, supremacy of Parliament, rights of this imperial Crown, with their kindred others, unity of Empire, allegiance to the State, and fuchlike high-founding fefquipedalia verba, by becoming, in defiance of their impropriety, the deities of modern invocation, and by operating as incantations to mislead mankind, have done more mischief to the State even than the fword itself of Civil War; be their authority ever so great, I can never subscribe to their use. Supremacy of Parliament is a combination of terms unknown to the English polity; and as to allegiance to the State, though it be the fanctified phraseology of an Archbishop, it is, like the "Whiggism" he censures, allegiance " run " run mad." * Supremacy is an appendant of the Crown, and so is allegiance. The former is the right of the King, (as heretofore it was of the Pope) in his ecclefiastical capacity, the latter in his temporal; and there cannot be two rights, in one State, to the fame thing. Who ever heard of the oaths of supremacy and of allegiance to the Parliament? And why are they not taken to the Parliament? Because they are due to the King, and not to the Parliament; and it is not fit that the Parliament should invade "the rights of this imperial Crown." Let each possess its own, and so the constitution will be preferved. That the Parliament is fupreme, I admit. It is the supreme court, or curia magna of the Constitution; as the House of Lords is the supreme court of Justice, or dernier resort of the Law. Both are supreme, and yet supremacy was never attributed to the House of Lords, but ever, in the language of the constitution, belonged to the King, as the supreme

^{*} Vide the Archbishop of York's Sermon, printed by T. Harrison and S. Brooke in Warwick-Lane, p. 22. It had been well if this, or any thing else that the Primate said, could have set assist was indefensible, so is it matter of great national concern to find such doctrines propagated by the once Tutor of the Heir-apparent to the Crown; though it prove of some consolation, as the Earl of Shelburne remarked, that his Majesty, perceiving the evil tendency of such principles, had, in his wisdom, removed him from the tuition of the Prince.

Head of the Church. In like manner I admit, that the people are bound in obedience to the laws of Parliament: but this does not therefore infer " allegiance to the State." Allegiance is one thing, obedience another. Allegiance is due to the King, so long as, in his executive capacity, he shall protect the rights of the People. Obedience is due to the laws, when founded on the constitution: but when they are subversive of the constitution, then disobedience instead of obedience is due; and refistance becomes the law of the land.

These were my reflections, consequent on Mr. Burke's declaration; but my hope was, that although we differed in words, in things we might yet be agreed. How great then was my disappointment, when instead of seeing this subject unrobed of its gorgeous apparel, and like truth made to appear naked and unadorned, when instead of discussion, which such a declaration feemed necessarily to call for, when instead of reasoning, and of argument, as if afraid of their consequences, I found affertions without the shadow of proof, and precedents importing no authority, but upholding error, substituted in their room. "Many others, in-" deed," fays Mr. Burke," might be more " knowing in the extent, or in the foundation \mathbf{R} cc of

" of these rights. I do not pretend to be an " antiquary, or a lawyer, or qualified for the " chair of professor in metaphysics. I never " ventured to put your folid interests upon spe-" culative grounds. My having constantly de-" clined to do fo has been attributed to my in-" capacity for such disquisitions; and I am in-" clined to believe it is partly the cause. I ne-" ver shall be ashamed to confess, that where " I am ignorant, I am diffident. I am indeed " not very folicitous to clear myself of this im-" puted incapacity; because men, even less " conversant than I am, in this kind of sub-"tilties, and placed in stations, to which I " ought not to aspire, have, by the mere " force of civil discretion, often conducted the " affairs of great nations with diftinguished " felicity and glory." This may be very true, but furely it is not very fatisfactory. To be more zealous than any one man living " for the " fupremacy of parliament; and the rights of " this imperial crown," and less knowing than others " in the extent and foundation of these " rights," is to profess more of implicit faith and enthusiasm, than, I confess, I expected to have met with, at least now adays, in civil concerns. Of fanatics in the church I knew there were still many to be found, but a state fanatic, I thought, was a phanomenon in politics

tics not of modern appearance. If indeed our parliaments were, as our Scottish race of Kings held themselves to be, God's vicegerents, and governed the state de jure divino; then such a degree of belief had been only correspondent to the occasion of it: but parliaments have ever been the works of men's hands, as, thank God, we now know that our kings are; or otherwife we had not had our present most gracious Majesty on this throne, nor yet that additional folemn contract between king and people, I mean the act of settlement, for the eternal security, as I trust, of those rights of the subject which are intrusted to the executive power. Again: Why should a man be either antiquarian, lawyer, or metaphyfician, or what need is there of speculation, to know " the extent " and foundation of these rights?" The rights of Englishmen want no such professional authority for their support: neither are they mere abstract terms, the entia rationis, or creatures of the understanding; but are, for our knowledge, written in our hearts, with the blood of our ancestors. But "the affairs of great na-" tions are often conducted with distinguished " felicity and glory by the mere force of civil " discretion." What! are the rights of Englishmen to be held at the discretion of mi-B 2 nisters?

nisters? Is civil discretion the rule of our government? Wherein does civil discretion differ from will, the law of tyrants? And will any minister of this country say, " I am not con-" versant in this kind of subtilties, the extent and " foundation of these rights," and therefore will govern by this unconditional power, the mere force of civil discretion? This can never be: but I have faid that I found affertions without the shadow of proof, and precedents importing no authority, but upholding error; and this obliges me to be more circumstantial. The subject is a deep one; and the consideration of it the most interesting of any that ever fell under political contemplation. It is no less than to know whether our civil existence has any real foundation; or whether, as it is faid of the fea, it be without a bottom. Perhaps I may be lost in the depths of research: but if I am, I carry this confolation with me, that I fink in the cause of truth. I have this hope, nowever, of preservation about me, that I shall not dive into mysteries, nor yet venture among the quickfands of metaphyfical abstractions. The constitution of my country is the ground on which I wish to stand, and if I gain this shore, my safety present will reward the dangers past.

Mr. Burke having given us his creed in the supremacy of parliament, next applies its unlimited power to and over the American Colonies; and then tells us what the supremacy of parliament is in England. I shall consider the last first, namely the supremacy of Parliament in England, as a major proposition in which the minor is contained. He fays (in order to shew " the compleatness of the legislative au-" thority of parliament over this kingdom") that " if any thing can be supposed out of the power " of human legislature, it is religion: I admit, " however, that the established religion of this 46 country has been three or four times altered " by act of parliament; and therefore that a " statute binds even in that case." This is conclusive as to Mr. Burke's idea both with respect to the unlimited right as well as the unlimited power of parliament: but whilst he is sharp even to a point for the general unlimited right of parliament, he adduces some cases to blunt the edge of its power over this kingdom. He fays, "But we may fafely affirm, that notwith-" flanding this apparent omnipotence, it would " be now found as impossible for king and par-" liament to change the established religion of " this country, as it was to King James alone, " when he attempted to make fuch an altera-"tion without a parliament." Further: "I B 3

" fee no abstract reason, which can be given, " why the same power that made and repealed "the high-commission court and the star-" chamber might not revive them again: but "the madness would be as unquestionable as "the competence * of that parliament which " should make such attempts." Furthermore: "The king's negative to bills is one of the most " indisputed of the royal prerogatives, and it " extends to all cases whatsoever; but the ex-" ercise is wisely foreborne." Moreover: "We " know that the convocation of the clergy had " formerly been called, and fat with nearly as " much regularity to business as parliament it-" felf. It is now called for form only." These then are what I call precedents without authority, but upholding error: for diftinguishing, as must be done, between right and power, parliament cannot exercise a power without a right to that power; or if it does, it is an usurpation of power, which sooner or later never fails of redress. Precedents therefore of acts of parliament, repugnant to the fundamental principles of the constitution, are no proofs of the supre-macy or omnipotency of parliament, but in-stances only of the abuse of parliament; "and " as no government," fays Machiavel, "can be

^{*} It is prefumed that incompetence is here meant, and that competence is an error of the press.

"of long duration, which, by the original formation of its constitution, is not frequent—"ly renewed or drawn back to its first princi—"ples," so whenever this happens to us, as it often has done, and, I trust, is again not afar off from us, these precedents, like so many clouds dispersed, only serve to shew, that although they may darken the sace of the constitution, they can never extinguish its light.

But a word or two more particularly of these precedents. Much stress has been laid on the alterations that have been made in the established religion, in order to shew the right of Parliament to omnipotency: it is the doctrine of Sir William Blackstone*: but as the most able chymist cannot extract that from any given thing, which does not exist in its nature, so is this precedent, for this reason, by no means a case in point. In the first place, religion has nothing to do with the civil rights of the State. It is set apart from them, and belongs to the Church ‡. The civil rights of the State are of a temporal nature: they are positive, they

^{*} Vide his Commentaries, vol. i. p. 161.

I am aware how much I here differ from the very able Prelate, who is for harnefling Church and State together, like coach and horses, that He as one of the drivers may enjoy the smack of the whip; a smack which he cannot forget, and which he gave me reason to remember when I was at Westminster school:

are general, affecting every member of the community equally and alike. Religion is of a spiritual nature: it is a negative duty, and not a positive right: it is not general, but varies according to men's consciences: it is the subject of toleration, for no laws can have power over men's minds. What Act of Parliament can make me believe that three is one, or one is three, if I do not chuse to believe it? Or that my falvation in the next world is to be obtained by the belief of 39 articles in this? The established religion, therefore, is no more than that dress which the State taylors have provided for Religion to go to court in; and the same taylors that made this drefs, can alter it, as we have feen, and as the fashion of the times changes.

But if this was not the case with the established religion, how, in the next place, does its alteration shew the right of Parliament to omnipotency? What effect has it had on the constitution? Are we less free now, either in Church or State, than we were before the Reformation? I should imagine that we are more free in both, and if so, freedom being the first principle of the constitution, the power of Par-

but as I am now out of his clutches, so I hope I am out of his books too, at least such as are akin to his political sermons, Vide Archbishop of York's Sermon, p. 10.

liament

liament to alter the established religion has been but correspondent to its right; and therefore, whilst it is no proof of the supremacy of Parliament, I should not be forry to see a little more alteration of it. I think it may still be amended, without offence to the people, or injury to the constitution; nay even with satisfaction to some of the clergy themselves. The fecond precedent is that of the High Commisfion Court, and the Star Chamber; which is in direct proof of my argument: for they, being usurpations of power, and abuses of the right of Parliament, have been dissolved; and therefore I agree with Mr. Burke that it would be madness to revive them, and for the reason he gives too, to wit, "the incompetence of " Parliament:" though if the power of Parliament be unlimited, is not the incompetency of Parliament a position somewhat paradoxical? The third precedent is, "the King's negative to Bills, which is wifely forborne." This is the forbearance of a known right to a power vested by the constitution in the Crown, and not the exercise of a power unknown to the constitution. As it therefore shews, that, even where there is a manifest power, that power is limited; fo it proves, of course, that where there is no manifest power, there can be no right to unlimited power. The last precedent

is that concerning the Convocation of the Clergy; and to this, what I have faid on the head of the established religion, inasimuch as ecclesiafical matters have nothing to do with civil concerns, may here be applied. But I do not recollect that, in bringing the Convocation of the Clergy to its present formal state only, there was any exertion of power of any kind to this end. If I remember aright it was a bargain. It was agreed that, on their Convocations becoming merely passive, the beneficed Clergy should pay no further subsidies to the government, as they used to do in Convocation; and that they should be represented in Parliament, by being allowed to vote at the elections for Knights of the Shire: for before this they were not represented in Parliament, but in their own Convocations; and therefore Parliament had no right to tax them, nor were they taxed by Parliament, notwithstanding its unlimited power, and " the compleatness of its legislative " authority over this kingdom."

If this then be the result of these precedents, and the State of what has been offered by Mr. Burke for this arbitrary right in Parliament, extending even to Religion itself, and whose power is limited only by "the mere force of "civil discretion;" is there nothing further that

may be faid against this right? I shall consider. There is nothing so much talked of, and yet nothing so little understood, as the English Constitution. Every man quotes it, and upon every occasion too: but few know where to find it. If one enquire after it, an Act of Parliament is produced. If you ask what it is, you are told it is the Law. Strange mistake! The Constitution and the Law are not the same. They differ and in what manner I will endeavour to point out. In the great machine of State there are found three principal powers, with a variety of others subordinate to them; particularly the Prerogative of the Crown: which is a power there vested not to counteract the higher powers, but, if at any time there should be occasion, to fupply their deficiencies. The first of these principal Powers, is the Power of the People; the second, the Power of the Constitution; the third, the Power of the Law. Now the Power of the People is first, because, without People, there could be neither Constitution nor Law. The Power of the Constitution is second, for it is the immediate effect of this first cause; and if the People and the Constitution make the first and the fecond Power, there is no need to prove that the Law is the third Power of the State. It follows in the order I have laid down. As from the People then is derived the Constitution,

tion, so from the Constitution is derived the Law; the Constitution and the Law being, in a due course of lineal consanguinity, the descendants of the People.

But now I shall be asked, what is this Constitution, and what is this Law? I answer, that by pointing out their relations, their differences too are marked. But this is not enough: definition is necessary, and therefore, as a definition of the name I would fay, that Constitution fignified Compact, and was the same with public or political Law; and that Law, as here meant, was the municipal or civil Law of the State: but as a definition of the thing, perhaps both may best appear as derived the one from the other. I define Constitution then to be, those Agreements entered into, those Rights determined upon, and those Forms prescribed, by and between the Members of any Society in the first fettlement of their union, and in the frame and mode of their Government; and is the Genus whereof the municipal or civil Law of fuch established Community is the Species: the former, ascertaining the reciprocal duties, or several relations subfifting betwixt the governors and governed; the latter, maintaining the rights and adjusting the differences arising betwixt individuals, as parts of the same whole. And this I take take to be the true distinction, and real difference between the Constitution and the Law of England. But this is matter of Theory only. It is the passive state of Government, and Government must be active. Practice therefore is to be superadded to this Theory; and hence the origin of Parliaments. What then are Parliaments? Parliaments make the formal, as Rights do the substantial, part of the Constitution; and are the Deputies, the Agents, or Appointees of the People, entrusted by them with the Powers of Legislation, for the purpose of preferving (and not of destroying) the established Rights of the Constitution. But what are the established Rights of the Constitution? In detail; they are multifarious, and many: but reduced to their first principles, they are these, " Security " of Life, Liberty, Property, and Freedom in "Trade." Such are the great Outlines of the English Constitution, the short history, or abstract of that original Compact, which is the bond or cement of our civil union, and which forms, in particular, the relations that exist betwixt the legislative Power of the State, and the People. But there is still another relation to be considered. The legislative Power of the State must receive its force from an executive Power. This executive Power is lodged in the Crown, from whence a relation arises betwixt the Crown and People; and is called "the Contract between " King

"King and People." As Compact then is that Agreement of the People with the legislative Power, or among themselves, concerning their same Rights; so Contract is that Bargain of the People with the executive Power concerning their different Rights*. But here it will be

* Writers upon this subject have confounded the two terms, Compact and Contract together; making them to fignify one and the fame thing, though really different. Compact is an Agreement entered into without any other confideration, than that of the plighted faith of the parties to the articles agreed upon: for the articles being general, it is equally the interest of every individual to observe them without any additional obligation; and fuch is the original Compact, or Constitution of this country. But Contract is a Bargain, with a condition annexed thereto, that demands a quid pro quo; and fuch is the "Con-" tract between King and People": for the executive Power being lodged in the Crown, the King may fuffer the Laws to fleep, or pervert them " from their right use to their worst abuse," which, making the articles of this Contract not general, calls for different covenants; and therefore the King, at his coronation, takes an oath to protect the Rights of the People; and the People, in return, owe, and may be called upon to fwear, Allegiance to the King. It may be further observed, that as it was not to be supposed that Parliaments, whose rights were precisely the same with those of the People, could possibly enact Laws subversive of those Rights, so the original Compact seeming to require no other fanction, no other agreement between the legislative Power and the People was ever thought of: but now Corruption, that felfdevouring monster of the State, making fresh covenants necesfary, it is to be hoped, that the same explicit, unevalive, express Contract, which exists between the King and People, will soon, very foon, be made to subsist between the Parliament and People. It was the doctrine of unlimited Power in the Crown that obtained the former; it is the now new and more dangerous doctrine of unlimited Power in Parliament that must procure the latter.

faid, How is this known, and where is this to be found? I reply, As well in the reason of the things themselves, and our own experience, as in the letter and spirit of our Charters: for instance, in Magna Charta, which is not only declaratory of the original Compact, or fundamental Rights of the People, but is itself that solemn Contract, which was had between King and People, for the protection of those Rights; and therefore, as such, proves quod erat demonstrandum.

But now I may be told, that although I have made a distinction between the Constitution and the Law of England, I have cited Magna Charta, which is an Act of Parliament, and consequently the Law of England, as for the Constitution of England. The objection is specious only, for it is groundless. In the first place, it is not true that Magna Charta is an Act of Parliament; and for this reason: that it was obtained in the field of battle, with fword in hand, in Runing-Mead, between Windfor and Staines, where the People had pitched their tents, and where, as history further informs us, "King John and his adherents ap-" peared to be an inconfiderable number, but " the Lords and Commons filled the country."

It is therefore true, that Magna Charta was the Act of the People at large, and not of the Legislature alone. Besides: it is proved by Acts of Parliament, that it is not an Act of Parliament; and that Parliament (unlimited as its power is now faid to be) has no power over it at all: for it is declared by the statute of the 25th of Edw. I. that Magna Charta was obtained by the common Affent of all the Realm, and that it was to be received as the Folcright, or common Law of the Land. And by the 43d of Edw. III. all statutes made against Magna Charta are declared to be void: fo that whilst Magna Charta proves the Constitution to be anterior to the Law, Acts of Parliament shew that it is not subject to the Law, nor under the power of Parliament. But, in the next place, admitting Magna Charta to be an Act of Parliament, still the objection remains without foundation. For Magna Charta, being not enactive of new Rights, but, as I have faid before, declaratory only of those old Rights of the People, some of which are of Saxon ancestry, others coeval with the first form of British Government, is a Law only in proof of the Constitution; and therefore supports my position, that the Constitution and the Law are not the fame.

But there is still another objection, which I must anticipate in order to remove. It may be objected, that if (as I have shewn) the People be made the source of all power in the State, in what manner is such an idea to be reconciled with the doctrine, that "Government certainly " is an Institution of divine Authority?" * for these (upon another occasion) are the words of Mr. Burke; though, he adds, that its Forms and the Persons who administer it, all originate from the People. What a pity that an "In-"flitution of divine Authority" should ever be found in the hands of Devils, as our Government fometimes unhappily is! But I do not mean to enter into the merits of this doctrine. Indeed I am bound not to do fo: for I have faid, that I will not dive into mysteries, lest I be drowned; and I will keep my word. But as this faid mode of attributing to natural effects fupernatural causes, or mixing Church and State together, has already done a great deal of mischief to the community; as I perceive that the divine Right of Parliaments, like the divine Right of Kings, to do what is wrong, with its concomitant train, passive obedience and nonrefistence, is now from the

[&]quot; Pulpit, drum ecclesiastic,

[&]quot; That's beat with fift, instead of a stick,"

^{*} Vid. Thoughts on the Cause of the present Discontents, fifth edit. p. 67.

founding forth in the ears of the * People; as I am content to judge of things past by the present, leaving to others all better rules of judging; and inasmuch as example goes before precept; so the present state of America affording not only much notable information on this head, but serving to illustrate the whole of what has been here said on the subject of Go-

* See a Sermon preached before the University of Oxford, on Friday, December 13, 1776, being the day appointed by proclamation for a general Fast. By Myles Cooper, LL. D. Prefident of King's College, New-York, and Fellow of Queen's College, Oxford. Published at the request of the Vice-Chancellor and Heads of Houses, and printed at the Clarendon press. This Doctor fays, p. 12. "It is difficult indeed to affign any reasons that will justify the Rebellion of Subjects against the " fovereign Authority." " Submission to the higher Powers" is enjoined at least upon Christians, under the severest penalty. " But were Christianity altogether out of the question, yet the " infurrection of subjects against their rightful Governors, is " condemned by those Laws which are fundamental to society." He fays too, p. 22. " When men's principles are wrong, their " practices will feldom be right. When they suppose those " Powers to be derived folely from the People, which are or-" dained of God, and their heads are filled with ideas of ori-" ginal Compacts which never existed, and which are always explained so as to answer their present occasions; no wonder " that they confound the duties of rulers and subjects, and are or perpetually prompted to dictate where it is their business to " obey. When once they conceive the governed to be superior " to the governors, and that they may fet up their pretended " natural Rights in opposition to the positive Laws of the State; " they will naturally proceed to "despise dominion and speak " evil of dignities," and to open a door for anarchy, confusion, and every evil work, to enter." What more did Sacheverel fay? And yet Sacheverel was impeached, whilst Doctor Cooper may expect preferment. vernment. vernment, I shall, with some advantage I trust, and in as few words as I can, make use of the instance.

America, having declared itself independent of Great-Britain, returned to that state of Nature, or state of Society, where Government was to be instituted; and being so circumstanced, whilst it proceeded to form itself into separate Commonwealths, or States, each Commonwealth or State provided a Constitution or Form of Government of its own; which, although differing in mode and manner, agreed in substance and effect. The Precedent therefore of one Constitution answering for every other, I shall here avail myself of such extracts from the Constitution of the State of Massachusetts, as are necessary to my purpose. This Constitution then, or Form of civil Government, confifts of forty-three Articles, and is entitled, " An Act of the General Convention of " the Commonwealth, or State of Massachusetts, " declaring the same to be a free State, and " independent of Great-Britain, and establish-" ing a new Constitution and Form of civil "Government; which General Convention " was elected by the whole People for this fole " purpose, &c." It next recites those (but too much to be lamented) arbitrary and despotic measures of this country, which occasioned the Declaration

Declaration of Independency; and after this, proceeds to fay, "The antient Government " of this Colony being thus totally diffolved, " and the People driven into a State of Nature, " it becomes their indispensible duty, and what " felf-preservation requires, to declare them-" felves independent of Great-Britain, and to " establish such a Constitution and Form of "civil Government, as to them appears best " calculated to promote their greatest possible "happiness:" " And whereas it is absolutely necessary for the welfare and safety of the " inhabitants of this Commonwealth, that a " just and permanent Constitution and Form of " civil Government should be established as " foon as possible, derived from and founded on " the authority of the People only, in whom is " the origin of all governmental Power, and " who have at all times a right, by common " confent (whenever the great end of Govern-" ment, the general good is not obtained) to " alter and change their Constitution and Form " of Government, in fuch manner as may best " promote the fafety and happiness of the " whole."

"We, therefore, the Representatives of the Freemen of Massachusetts, in general Con"vention met, for the express purpose of framing such a Constitution and Form of Go"vernment,

vernment; gratefully acknowledging the goodness of the supreme Governor of all, in permitting us peaceably, and by common con-" fent, deliberately to form fuch rules, as we shall judge best adapted for governing this Commonwealth in justice and righteousness; and being fully convinced that it is our indispensible duty to establish, to the utmost of our power, such original principles of civil Government, as will best promote the general happiness of the People, do, by virtue of the authority vested in us by our Constituents, declare, enact, and establish the following Constitution, and Form of civil Government, for this Commonwealth, to be and remainin full force therein, from and after the fecond Wednesday in _____, and forever " thereafter to remain unaltered, except in such " articles as shall hereafter, on new circum-" ftances arifing, or on experience, be found " to require alteration; and which shall, by the " like authority of the People, convened for that " fole purpose, be altered, for the more effectual obtaining and fecuring the great end and " defign of all good Government, the Good of " the People."

[&]quot;Be it therefore declared and enacted by the general Convention of this Commonwealth, affembled for the fole purpose of de-C 3 "claring

"claring and enacting Independency, and esta"blishing a new Constitution and Form of
"civil Government, and by the authority of
the same, it is hereby declared and enacted,
as in the following general articles, viz.

1. "That this Colony is, and of right ought to be, and for ever hereafter shall, by the favour of all-gracious Heaven, be a free State, and absolutely independent of the Crown and Government of Great-Britain; and shall be styled, The Commonwealth, or State of Massachusetts."

5. " That this declaration of the general, " fundamental, and effential Rights of the " People of this Commonwealth, shall, for ever bereafter, be considered as the general se fundamental of the faid new Constitution s and Form of Government; and every order, se law, and statute, that shall bereafter be made by the general Court of this Commonwealth, " Shall conform to the Spirit, and plain simple " meaning and intention of these general funda-" mentals; and all and every order, law, and statute, that may bereafter happen to be made, " and shall be found contrary thereto, shall be null and void, and have no effect, and be im-" mediately repealed: and no alteration in these " general fundamentals shall bereafter be made, " but only by the immediate confent of the good " People

People of this Commonwealth at large, or their deputies, chosen for that special purpose."

6. "That all men are born equally free and independent, and their Maker has left them free liberty to fet up fuch Governments as best please themselves." "That Magistrates were set up for the good of Nations, not Nations for the honour and glory of Magistrates." "That the Right and Power of Magistrates in every country, was that which the Laws of that country made it to be." And, "That usurpation gives no right to govern."

7. "That all men have a natural and un" alienable right to worship God according to
" the dictates of their own consciences, and
" to enjoy a full and free liberty therein; pro" vided that they, under pretence of Religion,
" do not attempt to subvert the Constitution
" and Form of Government of this State, &c."

Here then is that in effe, what Dr. Cooper tells us "never existed," an original Compact. A Compact too, with Powers (which, according to him, "are ordained of God") folely derived from the People; and, the governed being superior to the governors, with natural Rights, "pretended," as he says they are, "set up in opposition to the positive Law of the C4 "State."

"State." Such is this Compact, and such, I presume, being all other original Compacts in their first institution, it is no wonder that their existence should be denied; inasmuch as they are the sovereign antidotes of those political poisons, Priest-Craft, and State-Craft, whose objects are dominion over "the Beasts of the "People *."

Here too is an "institution of Government," but where "the divine authority" of it is, who can discover? Indeed, in a century more, for we are already giving up things for words, sense for sound, and from the golden falling back into the iron age again, such notions of Government may be well received. Tradition will inform posterity that the Governments of America were instituted de fure divino, and not without some reason on their side; inasmuch as the more natural any Government is, in my opinion the more divine it is: but now that we

^{*} Such is Doctor Cooper's bumane appellation of those persons in America, who plundered, as he says, the Members of the Church of England, Him, I suppose, among the rest, and others, of their property; adding, "without any means of presser sent redress, though it is to be hoped, not without a prospect of suture retribution." Methinks the Doctor, having received a slap on one cheek, in the true spirit of a Christian, should have turned the other, and not have looked forward to a prospect of plundering the Americans of their property, because they had plundered him of his. However, whenever the Americans shall come to this country to deprive us of our Liberties, I will readily join the Doctor in his idea of Retribution.

are witnesses to their institution, we know, we see, and we find that they are instituted de Jure humano.

The next observation to be made is the affinity of these Governments to that of our own country. They are founded on original Compact, and so is ours. The lines of distinction betwixt the People, the Constitution, and the Law, are marked there as they are drawn here. The Constitution is derived from the People, and the Law from the Constitution. The Law cannot alter the Constitution: for all and every Law and Statute that are, by the general Courts, (equal to our Parliaments) made contrary thereto, are null and void: neither is the Constitution alterable, but by general Conventions of the People at large, held expressly and solely for that purpose.

If now then I should profess to believe that there is no more of divine authority in the Government of England, than in the Governments of America, a sample of which has been produced; and that the former is derived from the same powers, by the same means, and to the same end, namely, the good of the whole, as the latter: I hope I shall not be therefore accounted an Insidel by the Church, nor an unworthy Member of Society by the State. I must hope too, that if our Parliaments, who are the Trustees

Trustees of the People, and the Guardians of their rights, (for they are no more, and I am one of its Members) should ever attempt to defiroy those rights, that, as they will well deserve the fate, so may they feel all that vengeance which the offended Majesty of an injured People can bring down on their heads. Parliaments who will support the Constitution, will be supported by the People, and have nothing to fear; but those who will subvert the Constitution, let them tremble, as one man, even as Charles the First did, who lost his head in such an attempt; and which, as Lord Chesterfield tells us, " if he had not lost, we had certainly " lost our Liberties."

Having thus gone over the constitutional ground of this country, and taken a comparative view of the foundation upon which its Government is superstructed, the inference to be drawn from thence is this; that if the Government be as I have stated it to be, and as I shall hold it to be, till the contrary be proved, the right to unlimited power contended for in Parliament, cannot, in common apprehension, there exist. For although Mr. Burke afferts (and I mention this, because I wish to state, and not to mistate his meaning, and if I do, I trust he will impute it to the want of comprehension, and not to any intention in me)

se that Legislators ought to do what Lawyers " cannot; for they have no other rules to bind " them but the great principles of reason and " equity, and the general fense of mankind;" and although in arbitrary countries this is true, for there the People being divefted of all power, and both the legislative and executive authority vested solely in the Prince, he may have no other rules than these to bind bim; yet in free countries the case is different. In England, " the legislative," fays Lord Bolingbroke, " is " a fupreme, and may be called, in one fense, " an absolute, but in none an arbitrary power." " It is limited," fays Mr. Locke, " to the pub-" lie good of the Society." I fay, it is bound by the rules of the Constitution, for the rules of the Constitution are to the Parliament, what the Law is to the Judges. The People make the Constitution, the Parliaments make the Law; and as the Judges are bound to determine according to the Law of the land, so are Parliaments bound to enact Laws according to the rules of the Constitution; and not according to their own principles of reason and equity, and what they call the general fense of mankind: for these may differ with the principles of the Constitution, as we know they have done; and therefore arises the necessity of afferting the controul of the Conflitution over the Law and the Parliament.

But of this power of the Constitution over the legislative authority Mr. Burke has himself given the most pointed case. He says, " before this Act (that is before the Act for the partial " fuspension of the Habeas Corpus) every man " putting his foot on English ground, every " stranger owing only a local and temporary " allegiance, even a Negro slave, who had been " fold in the Colonies, and under an Act of " Parliament, became as free as every other "man who breathed the same air with him." What is it then that, fetting this Act of Parliament at defiance, manumits the Negroflave so soon as he puts his foot on English ground? Let it not be said that it is the pure air of this foggy island, that can work these wonderful wonders, for these are the halfwitted fayings of lawyers that would be orators, and fit only for the lullabies of nurses, or the fing fongs of children. Let it not be faid that the Act is local; for it is not local. The Act alluded to is the 5th of G. II. ch. 27. (but there are many other Acts to the same effect) and it vests a clear and unconditional property, confined no where, but absolute every where, in the owner to his purchased slave; and yet when this owner shall bring his slave to this country, he shall lose his ownership in him; though he hold him under an Act of Parliament. No: it is neither the one, nor the other, that gives occasion

occasion to this manumission. It is the Constitution of England, which maintaining liberty, and annihilating flavery, renders this Act of Parliament a tabula rafa, a blank parchment, without operation, without force, without effect. It is that Constitution, which is now resisting the rebellion of AEts of Parliament against it. In short, my idea of this Government, to speak as a lawyer would do, is, that Parliaments, as I have faid before, are the trustees of the People, the Constitution the deed of trust, wherein they stand seized to uses only; and these uses being named, they cannot depart from them: but for their due performance are accountable to those by whose conveyance the trust was made. The right is therefore fiduciary, the power limited. Or as a mathematician would fay, more in the road of demonstration; the Constitution is a Circle, the Laws the Radii of that Circle, drawn on its furface with the pen of Parliament, and it is the known quality of a circle, that its radii cannot exceed its circumference, whilst the People, like the compasses, are fixed in the center, and describe the circle. These, I say, are my ideas of this Government, that is, of the whole political system of this country, for this is what I would mean by Government, and I hope that they are just and true; or otherwise, dreadful indeed is the prospect before us! For if Parliaments have the right to alter the "established religion of the

" the land," and " if any thing can be fup-" posed out of the power of human legisla-" ture, it is religion;" if they are bound by no other rules than "the great principles of " reason and equity, and the general sense of " mankind," and not by the more determined principles of the Constitution, nor subject to the controul of the People; if, by the influence of corruption they are become "the Masters, " instead of the Servants," of their Constituents, looking down on the People, and up to the Court for honours and preferments, and granting money that they may receive it themfelves; I say, if these things be so, and are they not faid to be fo? where is the difference betwixt a free and an arbitrary country? where the difference between the despotism of the King of France, and the despotism of the Parliament of England? And what is this but to erect an Aristocratic tyranny in the State, a many-headed Leviathan, deplorable and to be deplored, dangerous and destructive, in proportion to the numbers of which its confifts.

Hitherto I have confidered the Supremacy of Parliament, or its right to unlimited Power in and over this Kingdom; and if I have shewn, that no such Power can exist in Parliament from the very nature of its institution, for it is a solecism in politics, and an absurdity in terms, to say, that in a limited Government, there can

be unlimited Power, the application of this Power over the Colonies must consequently fall to the ground; and with it the occasion of any further reasoning upon the subject. But as Mr. Burke has made some affertions respecting this "unlimited legislative Power over the "Colonies," that are not only new and different from every other Writer, but new and different from himself too, I hope, I shall be excused the trespass of a page or two more in the further consideration of this matter.

Mr. Burke fays, "When I first came into a " public trust, I found your Parliament in pos-" fession of an unlimited legislative Power over " the Colonies. I could not open the Satute-" book without seeing the actual exercise of " it, more or less, in all cases whatsoever." These then are what I have called affertions without the shadow of proof, or more properly affertions with the most convincing proofs of their being without foundation; for the proofs are taken from Mr. Burke himself. Here Mr. Burke fays, "I could not open the Statute-" book without seeing the actual exercise of " this unlimited Power over the Colonies in all " cases what sever:" but attend to what Mr. Burke fays in his speech on American Taxation, April the 19th, 1774, p. 40, 3d edit. printed for J. Dodsley, in Pallmall. There he says, " This is certainly true; that no Act avowed" Iy for the purpose of revenue, and with the ordinary title and recital taken together, is " found in the Statute-book until the year " 1764. All before this period stood on com-" mercial regulation and restraint;" and to prove this, that is, that a " Parliamentary in-" land Taxation" was not to be found in the Statute-book before the year 1764, is the bufiness of this entire page: but as the extract would be too tedious for this place, fo whilft I refer the Reader to the page itself, I will take the liberty of recommending to his perufal alfo the whole Speech, as a most excellent oration. If then America was not "taxed internally for " the purpose of revenue before the year 1764, " but all before this period flood on commer-" cial regulation," here is a case of Mr. Burke's own former shewing, that contradicts the case he now puts, of an "actual exercise " of unlimited legislative authority over the "Colonies in all cases what soever:" for if Mr. Burke could not find the exercise of this Power, that is, of internal Taxation over the Colonies for the purpose of Revenue, in the Statutebook, before the year 1764, no such Power having been ever exercised, he could not find the exercise of unlimited Power over the Colonies in all cases whatsoever, before the year 1764; and if he did not then find it, he could not find it after the year 1764: for the first instance of the exercise of this Power after the

the year 1764, was that of the Stamp-Act; and this Act, as soon as it passed, was resisted, and being refisted, it was repealed, and being repealed, it could afford no proof of the posfession of the Power. And yet Mr. Burke adds, "this possession passed with me for a " title." But, if, as has been faid, Parliament was not possessed of the Power of internal Taxation over the Colonies before the year 1764, no title to unlimited legislative Power in all cases what soever, before this time, could be founded on possession; for here is a manifest exception to this possession in the case of an inland Taxation; and from the year 1764, no title can be derived from possession, for the title has been always disputed, and possession never obtained. So far then Mr. Burke is new and different from himself. In what follows, he is new and different from others.

No one has ever before contended, as I know of, for the Right of Parliament to tax America, without the annexed idea of America being represented in Parliament. The idle phantom, the Cock lane Ghost, of virtual Representation, has been ever conjured up, as the ego sum ille, of this vile deception. But Mr. Burke has afferted, has maintained, and has proved, that America is not represented in Parliament, and yet insists for the unlimited Right in Parliament to bind America in all cases D whatsoever.

whatsoever. He says, "If any thing can be "drawn from such examples by a parity of the case, it is to shew, how deep their crime, and how heavy their punishment will be, who shall at any time dare to resist a distant Power, actually disposing of their property, without their voice or consent to the disposition; and overturning their Franchises without charge or hearing *."

Here then is his affertion, that America is not represented in Parliament; and his affertion that Parliament has an unlimited legislative Power over America in all cases what soever, has been already stated; which is a position as unaccountable to me, as it is new. But let me fee if such a position is defensible, and whether a question or two may not ferve as an answer thereto. The first question I shall propose is, whether Representation in order to Taxation be not an bereditary indispensible privilege of the British Subject? The next question is, whether the Americans are British Subjects or not? for if they are not British Subjects, Great Britain has nothing to do with them, no more than France, or Spain, or any other country has: And again, if they are British Subjects, and Representation in order to Taxation is the bereditary indispensible privilege of a British Subject, Representation in order to Taxation

^{*} See also Mr. Burke's Conciliatory Propositions.

must be the bereditary indispensible privilege of the Americans, as British Subjects. From whence then can the Right to Parliament be derived of unlimited legislative Power over the Subjects of Great-Britain in all cases what soever without Representation in Parliament, which the Americans do not possess, as Mr. Burke has shewn; and which, in order to Taxation, is the bereditary indispensible privilege of British Subjects? I presume it cannot be derived from the Constitution; for no man will affert, that the Constitution gives a Right to Parliament to levy Taxes upon British Subjects without Representation; and if the Constitution does not give this Right, the claim of it in Parliament must be unconstitutional: which naturally brings me to the confideration of the declaratory AET, as falling under this point of view. Mr. Burke has proved that America is not represented; every wife man fays the fame; and it is only folly the last that would affert the contrary. The declaratory Act declares, and Mr. Burke supports the declaration, that this country has a right to bind America in all cases what soever; and of course to tax America, though not represented. Upon these principles is it possible to maintain this Act? It has no foundation. It rests not upon the Constitution. It is subversive of the Constitution. It has not the fundamental requisites of a declaratory Law. No Law declaratory of Rights was ever before D_2 made.

made, or ought to have been made, whose recital did not express the sources from whence those Rights are derived; whether direct from the Constitution, or indirect from other Acts of Parliament founded on the Constitution. or from general Customs, or particular Customs, which make the Common Law of the Land. Look from Magna Charta, through every declaratory Law, down to the Act of Settlement, and it will be found that they are, every one of them, in perpetuum rei testimonium, or testimonials only of what had before existed: But this Law is declaratory not only of what never existed before, but of a Right, against which common usage, which is the common Law of the Land, has been in direct opposition. I say in direct opposition, for America, from beyond the memory of man, nay, even from the very first date of its civil existence to the era of this reign, has been uninterruptedly used to the internal Taxation of itself.

This Law therefore must be repealed. As it was enacted for the dignity of this country, so for justice sake, which is the true dignity of this country, let it now be repealed. It is against Right, and usurped Power cannot uphold it. It is true the motives that brought it into being were intentionally upright, but with the patronage of the Author of those motives, the motives themselves ceased; and of the Act since,

frace, the double Cabinet, as Mr. Burke calls them, has made an infamous use. They knew! not where to look for the Right of Taxation. They found it in this Act, and have so tyrannized under it, that America has now stamped its foot upon it, and will never stir a step until " this tyranny be overpast." Every island in the West-Indies look upon it with terror. All Ireland fee it with a jealous eye: For who is the Casuist that can discriminate between a British parliamentary Right to tax America, and a British parliamentary Right to tax Ireland? The case is the same. The Right has been avowed in Parliament, and add to the 6. Geo. 1. ch. 5. or Irish declaratory Act, the words only, " in all cases what soever," and the matter is at iffue: but Inexpediency prevents the exercise. Inexpediency! curse on the term! What may be inexpedient to-day, may be expedient to-morrow. Inexpediency is as the tyrant's fword, that hangs over the head, fuspended by a thread; and which Discretion only is to keep from falling. But are Englishmen to be thus worded out of their Rights? Forbid it, Common-Sense! Or rather let the fixed Principles of the English Constitution, and the eternal Rights of Humanity, be the fifter Fates to cut this Thread of Danger, by establishing in its room—Themselves.

One word more. It may be further asked, D 3 What!

What! are the Americans to enjoy all the Rights appertaining to this Government, and not contribute to its support? I answer, by no means: it is not fitting they should. The fundamental Rights of the English Constitution I have shewn to be, the security of Life, Liberty, Property, and Freedom in Trade; and to these Rights all British Subjects within the realm, are without exception, entitled, and should enjoy: but it is not so with British Subjects out of the realm, for of them something more is required, and of them something more has been received. They, (I mean the Colonists) furrendered from the first, one of the fundamental Rights of the Constitution, to wit, Freedom in Trade. This they gave up, and this they put into the monopolizing hands of their brethren here, as the gift of Contribution, for the price of Protection. Excellent, and how valuable the exchange! when the very gift of contribution did itself enhance the price of protection! inestimable jewel! than which a nobler did not grace the royal crown; and yet noble as it is, it was not enough to fatisfy the appetite of despotism. More must be had. All was required. With Freedom in Trade, Life, Liberty, and Property were to be parted with; or, in the alternative, the revenge of Herod was to be taken in the blood of Innocents. Revenge has been purfued: but Herod-like, and I will use the language of the immortal Shakespear; When When you shall these unhappy deeds relate, then must you speak,

Of one, whose hand Like the base fudean * threw a pearl away Richer than all his Tribe.

I have now done with the Thoughts, which the perusal of Mr. Burke's Letter had awakened in my mind; and find myself arrived at that period where I had designed to stop: but as I am upon the important subject of America, as there are one or two matters more that resting on my mind, I could wish to remove, and as I shall not again trouble the public with any surther sentiments of mine upon this occasion (for truth being my only object herein, I shall as readily look for it in others, as seek it in myself) so, if I should advance one or two paces beyond my journey's end, I hope I shall be excused.

Having attended my duty in the House of Lords upon every important debate respecting America, it was there that I derived much useful information to myself: but yet, however instructed, as I truly have been, by the wisdom of those who opposed the measure of a destructive civil war, I must confess, my mind has been more made up on this subject, by what has not been said by the advocates for it, than by what has been advanced against it. The first, the chief, and

4 the

This was Herod, who flew his Wife Mariamne.

the great champion of all, for this calamity to a country, has been the now Earl of Mansfield: but his being fo, was to me, at the very first fight, an argument against the war; for his Lordship is no warrior, and therefore I supposed that if he had been more competent to the events of fuch an undertaking, he had been less sanguine in his recommendations of it. Let us see, however, what his arguments were. The first point to be settled was, which of the two countries was the aggressor; and of course which was to blame: but this would not bear a dispute, for in the year 1764, when all was peace and harmony between both countries, this country, by its Stamp-Act, flung the first stone at America, and so (the year 1766 excepted) Great Britain continued this floning of America, like as Stephen was stoned, to the year 1775; when, by Negroes and Indians, the Americans were to be scalped and flayed alive, even as Bartholomew was; and, in both instances, perhaps for the same reason: for Stephen and Bartholomew were Saints, and the Americans are called Dissenters, and Dissenters are curfed, by fome Church of-England-Men, as Saints. To get rid then of this stumblingblock, of aggrefforship, something was to be devised; and this something was, that America meant to become independent of this country: But how was this to be supported? The learned Lord proved it by inuendoes, by fayings and doings,

ings, à priori, out of the American Assemblies; from Montcalm's Letters, which have been found to be forgeries; and from Kalm's Travels, who made a voyage to America in the year 1749, and who fays, that he was there told, that " the English Colonies in North "America, in the space of thirty or fifty years, " would be able to form a state by themselves, " independent of Old England." But here I must beg leave to make an observation or two. Supposing Mr. Kalm, instead of going to North America in the year 1749, had come into England, and on his arrival had been told, that there were men in this country who on their bare knees had drank the Pretender's health; would not the inference have been just as fair to fay, that this country meant to put the Pretender on the throne of this kingdom, in exclusion of the present family, as to say, what Mr. Kalm does fay, that America meant independency? I think it would: for the question is not what individuals fay, but what is the fense of the nation. And it is plain it was not the fense of this country to put the Pretender on the throne, and I hope it never will, notwithstanding his health has been so drank, &c. &c. &c. &c. and what the fense of America was, appeared by the unanimous declaration of the people themselves in the most solemn and authentic manner. They fay, through their Congress, (and if ever the sense of any people

were taken, it was here found, for so free and general an election of Representatives was never before known in the annals of the world) "We " chearfully consent to the operation of such " Acts of the British Parliament, as are, bona " fide, restrained to the regulation of our ex-" ternal Commerce, for the purpose of securing " the commercial advantages of the whole em-" pire to the Mother Country," &c. &c. * It may be indeed faid, that America has declared herself independent of this country, and therefore the prophecy of Mr. Kalm was true; but this does not follow: for this country, by putting America out of the protection of its laws, forced it, for felf-preservation sake, into that state of Independency. Admitting, however, that America did mean Independency, I will now ask, Were the measures pursued the means to prevent their becoming fo? I apprehend not: For although the force of this country be sufficient for conquest, ten times its force would be infufficient to hold the country in fubjection. Three millions of people, not only with their affections loft, but their inveterate hatred gained, at three thousand miles over the Atlantic, distant from the arm of power, are not so easily held prostrate at the feet of Parliament, as Lord North was directed to fay could be

^{*} Vid. Votes of the Congress, reprinted for J. Almon, oppofite Burlington-house, Piccadilly, and also the last Petition of the Congress to the King.

done. No: One hour of justice and moderation would have done more, than all the German Blood-hounds hired from all the German Traffickers in Blood, in all the petty Principalities of Germany can atchieve in twenty years to come.

But to return to the learned Lord. Having fet up Independency, and upon what grounds I have shewn, as the object of America; his Lorship argued, that the Rubicon was passed, that we should kill the Americans, or the Americans would kill us, and that we could not look back, but must go forward, though our destruction be certain and inevitable. In short he drove us on, until we are all now driven, like so many asses, into a Pound; and are so impounded, that Fourteen Shillings Land-Tax in the Pound, nay, all the Pounds, Shillings, and Pence in the Nation, will not unpound us. Such is our difgraceful, and truly to be lamented, fituation. The contempt of ourselves, and the mockery of all Europe besides. Bullied by Frenchmen, infulted by Spaniards, me-morialized by Dutchmen; and yet, happy would it be for us, if these were the only calamities that we are to fuffer.

Another argument for our entering into this favage War was, that the Americans were Cowards; an argument as full of indignity to this country, as it was of reproach to him that made it. Of Indignity, for are We to go to

war with our enemies because they are cowards? Does English valour want such motives of inducement for its exertion? Shameful Reflection! Of Reproach, for it was the argument of the first Lord of the Admiralty, the Earl of Sandwich, that high Officer of the State, placed at the Head of the British Navy. And is this the language of the gallant Navy of England? No: the brave love the brave, and had rather meet bravery in the wounds of themselves, than cowardice in the difgrace of others. To fight with Cowards is the loss of Honour, " Honour is the Sailor's, as the Soldier's care." But the Americans are not Cowards, and this I fay for the honour of this country. were, fuch an Army and fuch a Navy doing no more than has been done in America, would well warrant the propriety of those incitements to action, which the Earl of Sandwich thought necessary to hold out in the cowardice of America. When the Americans, therefore, are called Cowards by us, let us remember that it is not them, but ourselves, that we accuse of Cowardice.

The last argument I shall take notice of, (for it is endless to recount the absurdities that have been urged in support of this iniquitous warfare) and which I mention for that it seems to contain a secret that should be known, is the argument of Lord Cardiff, son of the Earl of Bute. His Lordship said, as a reason for carry-

ing on this War of Parliament, that the Americans had offered to lay kingdoms at the feet of the Crown, but which his Majesty distained to accept *. This is an heavy charge, and, as I am as much an enemy to arbitrary power in the Crown, as I am to arbitrary power in Parliament, if true, I must confess, except so far as the justice of this nation is concerned in such a war, I should feel little concern else for America: but as it feems very unnatural that men should be surrendering their liberties, at the very time that they are fighting for them, fo I thave reason to believe that this argument has been formed upon grounds that will not support it. It is true, the Americans acknowledge the authority of the King, and will not acknowledge the authority of the Parliament. It is from hence, therefore, I presume, inferred, that the Americans are laying kingdoms at the feet of his Majesty; and if so, to explain this matter, is to remove the charge. The Americans were the subjects of the Crown of England, and of course owed allegiance to the King of England. They were never the fubjects of their fellowfubjects the Parliament of England, and therefore neither owed nor professed allegiance to Parliament. Befides, the King of England, by the Constitution of England, cannot levy taxes on his subjects; and therefore, for the Ameri-

^{*} The Archbishop of York has adopted the same affertion. See his Sermon, p. 22, and 23.

cans to acknowledge the authority of the King, is no furrender of their property to the King: whereas if they acknowledged the authority of Parliament, who do exercise the right of taxation over the People when represented, it would be, without their being represented, a surrender of their property to Parliament; and a forging of chains for themselves. Under the acknowledged authority, then of the Crown, the Americans still preserve their constitutional Rights: under the required acknowledged authority of Parliament, they would lose them; and this is the reason that the Americans acknowledge the one, and will never acknowledge the other. But it is feared, that some future King, not his present Majesty, for he has not a wish to govern but through his Parliaments, may, upon requisition to his faithful American subjects, procure fuch large grants of money, as shall enable him to govern without Parliaments. Indeed, if we are to judge of what America may do, by what it has done, upon fuchlike occasions, this argument is not without its force; and therefore, to prevent such generofity from being hereafter hurtful to this country, (and there cannot be a better time for it, as it is the object of his present Majesty to maintain the *supremacy* of Parliament,) let an Act be passed, (if it be not too late) declaring that all money obtained from the Colonies by requisition from the Crown, shall be carried into

into the Exchequer, and accounted for in Parliament. This will remove the danger apprehended, and prevent those lovers of flavery, the Americans, from making, at any suture period, the Crown of England arbitrary.

Upon the whole, when I perceive a war, and fuch a war too, so weakly supported, and yet so violently pursued; when I find the most elevated of the Church, preaching and publishing to the world passive obedience and non-resistance to the supremacy of Law*, whether that Law be right or wrong, whether it be

* The Archbishop of York says, "the foundation of legal freedom, is the *Jupremacy of law*." This I suppose is an apology for his Grace's allegiance to the Quebec-Act, and for his making this act a pattern for cramming Bishopricks down the Throats of the Americans, by the help of the Civil Power, that is, on the points of Bayonets. See his Sermon, pag. 19 and pag. 24.

His Lordship says too, "As there are in the nature of things, but two sorts of Government; that of Law, and that of Force; it wants no argument to prove that under the last Freedom cannot fubsist." This is a distinction without a difference; for when Law is contrary to the natural or civil rights of mankind, it is Force, and the worst of all force: for it is as "a wolf in sheep's cloathing," and cometh unawares, "like a thief in the night. See p. 19 of the above sermon.

Again, his Lordship fays, "These indeed" (that is "Despotism and Anarchy) have usually gone together, for no Anarchy ever prevailed, which did not end in Despotism." This
is a Bull, but an Irish one; and not a Popish Bull. If where
Anarchy prevails Despotism ends, Anarchy and Despotism can-

not usually go together. See p. 20.

His Grace will excuse the Attention I have paid him in the course of my observations: but as I am unfortunately one of those Parties who have (according to him) "no Principle belonging "to them," and are "in the last stage of political Depravity," I was willing to examine, a little, his Lordship's principles; that if I approved them, I might adopt them.

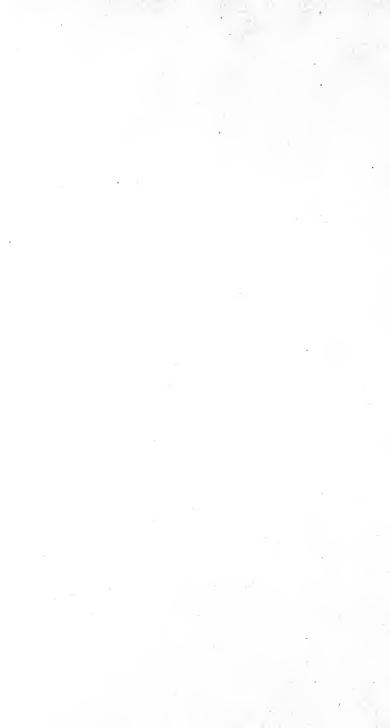
good or bad, whether it be to establish Popery or Protestantism, whether it be enacted by an honest, or by a corrupt and abandoned Parliament; when I see men that were pillored in the reign of good old George II. penfioned in this, and for the same reasons; when I hear of others hired to root out the very idea of public virtue from the minds, and tear benevolence from the hearts of Englishmen; when I reflect, but why add more to the black catalogue of public dangers? it is time to look at home: it is time, even with Stentorian voice, to call for union among the Friends of the Constitution: it is time that private opinion should yield to public safety: it is time that we keep both " watch and ward," for if the liberties of our fellow-subjects in America are to be taken from them, it is for the ideot only to suppose that we can preserve our own. dagger uplifted against the breast of America, is meant for the heart of Old England. agitur de vectigalibus, Libertas in dubio est.

In fine these are my Sentiments, and these my Principles. They are the Principles of the Constitution; and under this persuasion whilst I have signed them with my Name, I will, if necessary, as readily, seal them with my Blood.

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